Visa Letchumy a/p Raju & Ors v Menteri Pendidikan, Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)-274–05 OF 2021
RAVINTHRAN, NANTHA BALAN AND NORDIN HASSAN JJCA
6 SEPTEMBER 2022

Civil Procedure — Judicial review — Application for leave — High Court dismissed application for leave for judicial review — Appeal against decision — Whether extension of time to file leave application ought to be allowed — Whether there was final decision to implement teaching of Khat in school

The appellants filed an application for leave for judicial review at the High Court. The reliefs sought in the leave application, inter alia, were: (a) leave to file the judicial review application out of time; and (b) order of certiorari to quash the decision of the Ministry of Education Malaysia to teach Khat in primary schools ('the decision'). In opposing the application for leave before the High Court, the respondents raised a preliminary objection on the grounds, inter alia, that: (i) the leave application was filed out of time and no cogent reason was presented to the court; and (ii) the appellants had challenged the wrong decision. The High Court judge dismissed the appellants' application for leave for judicial review and hence this appeal.

Held, dismissing the appeal:

(1) The High Court judge's findings were that the decision was on 14 August 2019 and the application for leave was filed on 20 May 2020. The delay was about six months after minus the three months to file the application under the Rules of Court 2012. On the other hand, the appellants contended that the impugned decision was made on or about 2 January 2020. The Cabinet made the decision to change the implementation of the teaching of Khat to the implementation of Jawi writing on 14 August 2019. There was no evidence produced by the appellants to show that the decision for the teaching of Khat was made on or about 2 January 2020. The High Court judge had found that there was no good or cogent reason for the delay. The decision of the High Court judge was justified and there was no reason to interfere with the judge's discretion. Even if the appellants' contention that the decision was on 2 January 2020 was accepted, there was still a delay of about one month and 23 days to file the leave application. The reason given by the appellant was not a good reason for the court to allow the extension of time. The High Court was

correct in dismissing the appellants' leave application for want of jurisdiction (see paras 15, 18 & 21–22).

(2) The appellants' application for leave was bereft of any merit. There was no decision to implement the teaching of Khat in schools as it was replaced with the Jawi writing based on the Cabinet decision on 14 August 2019. Hence, it could not be said that the appellants were adversely affected by the decision to implement Khat which was no longer in existence when they filed the application for leave for judicial review on 20 May 2020. The application was frivolous and vexatious. The appellants had failed to fulfil the requirement that enabled the application for leave for judicial review to be made (see paras 26, 32 & 34).

[Bahasa Malaysia summary

Perayu memfailkan permohonan kebenaran untuk semakan kehakiman di Mahkamah Tinggi. Relif yang dipohon dalam permohonan kebenaran, antara lain, adalah: (a) kebenaran memfailkan permohonan semakan kehakiman di luar masa; dan (b) perintah certiorari untuk membatalkan keputusan Kementerian Pendidikan Malaysia untuk mengajar Khat di sekolah rendah jenis kebangsaan. Dalam menentang permohonan kebenaran di hadapan Mahkamah Tinggi, responden membangkitkan bantahan awal atas alasan, antara lain, bahawa: (i) permohonan kebenaran difailkan di luar masa dan tiada alasan kukuh dikemukakan kepada mahkamah; dan (ii) perayu-perayu telah mencabar keputusan yang salah. Hakim Mahkamah Tinggi menolak permohonan perayu untuk kebenaran semakan kehakiman dan oleh itu rayuan ini.

Diputuskan, menolak rayuan:

(1) Penemuan hakim Mahkamah Tinggi ialah keputusan adalah pada 14 Ogos 2019 dan permohonan kebenaran difailkan pada 20 Mei 2020. Kelewatan itu adalah kira-kira enam bulan selepas ditolak tiga bulan untuk memfailkan permohonan di bawah Kaedah-Kaedah Mahkamah 2012. Sebaliknya, perayu berhujah bahawa keputusan yang dipersoalkan itu dibuat pada atau kira-kira 2 Januari 2020. Kabinet membuat keputusan untuk menukar pelaksanaan pengajaran Khat kepada pelaksanaan tulisan Jawi pada 14 Ogos 2019. Tiada bukti yang dikemukakan oleh perayu untuk menunjukkan bahawa keputusan untuk pengajaran Khat telah dibuat pada atau kira-kira 2 Januari 2020. Hakim Mahkamah Tinggi mendapati bahawa tiada sebab yang kukuh atau meyakinkan untuk penangguhan itu. Keputusan hakim Mahkamah Tinggi adalah wajar dan tidak ada sebab untuk mengganggu budi bicara hakim. Jika sekalipun dakwaan perayu bahawa keputusan itu pada 2 Januari 2020 diterima, masih terdapat kelewatan kira-kira sebulan 23 hari untuk memfailkan permohonan kebenaran. Alasan yang

diberikan oleh perayu bukanlah alasan yang kukuh untuk mahkamah membenarkan lanjutan masa. Mahkamah Tinggi adalah betul dalam menolak permohonan kebenaran perayu kerana ketiadaan bidang kuasa (lihat perenggan 15, 18 & 21–22).

(2) Permohonan perayu-perayu untuk kebenaran telah kehilangan sebarang merit. Tiada keputusan untuk melaksanakan pengajaran Khat di sekolah kerana ia digantikan dengan tulisan Jawi berdasarkan keputusan kabinet pada 14 Ogos 2019. Justeru, tidak boleh dikatakan perayu terjejas teruk dengan keputusan melaksanakan Khat yang tidak lagi wujud apabila mereka memfailkan permohonan untuk kebenaran semakan kehakiman pada 20 Mei 2020. Permohonan itu adalah remeh dan menyusahkan. Perayu telah gagal memenuhi syarat yang membolehkan permohonan kebenaran semakan kehakiman dibuat (lihat perenggan 26, 32 & 34).]

Cases referred to

Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim [2011] 6 MLJ 490; [2012] 1 CLJ 805, FC (refd)

Ng Hee Thong & Anor v Public Bank Bhd [2000] 2 MLJ 29; [1995] 1 CLJ 609, CA (distd)

Stephen Kalong Ningkan v Government of Malaysia [1968] 1 MLJ 119, FC (refd)

Wong Kin Hoong (suing for themselves and on behalf of all of the occupants of Kampung Bukit Koman, Raub Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor [2013] 4 MLJ 161, FC (refd)

Legislation referred to

Evidence Act 1950 ss 57(1)(d), 78(1)(b)
Rules of Court 2012 O 53 r 2(4), r 3(1), (2), (6), (7),

Appeal from: *Visa Letchumy a/p Raju & Ors v Menteri Pendidikan Malaysia & Anor* [2021] MLJU 2186 (High Court, Kuala Lumpur)

Gunaseelan a/l S Thambinathan (with Keshvinjeet Singh) (Gunaseelan & Assoc) for the appellants.
Ahmad Hanir Hambaly (with Ng Wee Li) (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Nordin Hassan JCA (delivering judgment of this court):

[1] This is the appellants' appeal against the High Court Kuala Lumpur decision on 20 April 2021 in dismissing the appellants' application for leave for judicial review pursuant to O 53 r 3(1) of the Rules of Court 2012.

A THE BACKGROUND FACTS

[2] On 20 May 2020, the appellants filed an application for leave for judicial review (encl 1) at the High Court Kuala Lumpur. The reliefs sought in the leave application are as follows:

B

1. Bahawa Pemohon-Pemohon diberi kebenaran di bawah Aturan 53 Kaedah 3(7) Kaedah-Kaedah Mahkamah dan *kebenaran untuk memfailkan permohonan semakan kehakiman ini di luar masa* disebabkan oleh penularan wabak COVID-19;

2. Bahawa Pemohon-Pemohon diberi kebenaran untuk memohon *Perintah Certiorari* untuk dialihkan ke Mahkamah Yang Mulia ini untuk tujuan untuk ianya *dibatalkan keputusan Kementerian Pendidikan Malaysia untuk mengajar Khat, secara wajib di Darjah 4, di Sekolah Rendah Jenis Kebangsaan dalam mata pelajaran Bahasa Melayu.*

C

3. Bahawa keputusan tersebut digantung perlaksanaannya sementara menunggu penyelesaian muktamad prosiding ini;

D

4. Mana-mana perintah selanjutnya atau lain-lain relif yang berbangkit atau sebaliknya sebagaimana Mahkamah Yang Mulia ini anggap suai dan wajar; dan

5. Bahawa kos permohonan ini menjadi kos dalam kausa. (Emphasis added.)

E

[3] In the statement filed pursuant to O 53 r 3(2) in support of the application for leave, the appellants state, that the reasons for the application for certiorari to quash the decision to implement the teaching of Khat and for completeness are reproduced below as follows:

F

5.a. KHAT adalah seni kaligrafi yang berdasarkan dan berunsur agama Islam dan berasal dari Negeri Arab. KHAT adalah jawi KHAT Islam atau jawi KHAT Arab. Ia adalah amalan penulisan berseni atau seni KHAT dan, secara tambahan, berkaitan dengan penjilidan, di kawasan yang berkongsi warisan kebudayaan Islam yang sama.

G

b. Bentuk kesenian ini berasaskan tulisan Arab, yang untuk tempoh yang lama digunakan oleh semua Muslim dalam Bahasa masing-masing.

c. Orang Muslim menggunakannya bagi mewakili Tuhan kerana mereka menolak melambangkan Tuhan menggunakan gambar;

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d. Seni KHAT seni yang amat disanjung daripada seni-seni Islam kerana ia merupakan cara utama mengekalkan Al-Quran;

e. Syak terhadap seni gambaran taghut dan penyembahan mendorong perkembangan seni KHAT dan gambaran abstrak menjadi bentuk gambaran kesenian utama dalam kebudayaan Islam, terutama dari segi konteks keagamaan;

I

f. Berkemungkinan besar seni KHAT akan mengelirukan orang Islam sekiranya orang bukan Islam menggunakan seni KHAT dalam agama lain.

g. Kegunaan seni KHAT dalam bidang, urusan, perniagaan, dan kegiatan-kegiatan yang haram disisi agama Islam akan menyebabkan ketidakselesaan dalam kalangan orang Islam.

6. Pengajaran seni KHAT secara wajib kepada murid-murid bukan beragama Islam melanggar Artikel 11 dan 12 Perlembagaan Persekutuan.

7. Pengajaran seni KHAT secara wajib kepada murid-murid bukan beragama Islam merupakan ajaran Islam secara paksa.

8. Ibu bapa murid-murid bukan beragama Islam, di Sekolah Kebangsaan, berhak menolak pengajaran seni KHAT kepada anak-anak mereka.

9. Pengajaran seni KHAT secara wajib kepada murid-murid bukan beragama Islam juga merupakan satu keputusan yang tidak rasional dan/atau tidak munasabah kerana seni KHAT tidak akan dibenarkan digunakan untuk melukis petikan ('quotation') daripada kitab-kitab suci agama lain.

[4] In opposing the application for leave before the High Court, the senior federal counsel acting for the respondents raised a preliminary objection on the following grounds:

(a) the leave application was filed out of time and no cogent reason was presented to the court;

(b) the applicants had challenged the wrong decision;

(c) the applicants failed to name the decision maker;

(d) the applicants had failed to establish their locus standi to file the application for leave for judicial review; and

(e) the Cabinet decision to introduce Jawi writing in Sekolah Jenis Kebangsaan or Sekolah Kebangsaan is a policy decision and non-justiciable.

[5] Having considered the submissions by parties, written and oral, as well as the cause papers, the High Court judge dismissed the applicants' application for leave for judicial review.

[6] In this case, the High Court judge found that the leave application was filed out of time without cogent reason, the applicants had challenged the wrong decision, the decision maker where the decision was challenged was not named, the applicants had failed to establish locus standi to file the leave application for judicial review and the decision to implement Jawi writing in school is a policy decision which is non-justiciable.

[7] Hence, the present appeal is before us.

THE APPEAL

[8] Before we proceed to deal with the issues about the merit of the leave application, we shall deal first with the issue of the late filing of the said

application. This preliminary issue is pertinent as it goes to the jurisdiction of the High Court to hear the application.

[9] The law provides that an application for leave for judicial review shall be filed within 30 days from the grounds of the application first arose or when the decision is first communicated to the applicant. Order 53 r 3(6) states:

> An application for judicial review *shall be made promptly* and in any event *within three months* from the date *when the grounds of application first arose or when the decision is first communicated to the applicant*.

[10] However, the court may extend the period for filing the leave application if there is a good reason shown by the applicant as provided under O 53 r 3(7) which states:

> The Court may upon an application, extend the time specified in rule 3(6) if it considers that there is good reason for doing so.

[11] It is settled law based on the above provisions and decided authorities that an application for leave for judicial review must be made promptly within 30 days when the grounds of the application first arose or when the decision is communicated to the applicant. An extension of time to file the leave application would only be granted if there is a good reason presented by the applicant.

[12] In *Wong Kin Hoong (suing for themselves and on behalf of all of the occupants of Kampung Bukit Koman, Raub Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161, the Federal Court held as follows:

> [18] *A common factor in the above provisions is that an application for leave for judicial review must be made promptly* but the court may upon application, and if it considers that there is good reason for doing so, extend it. Thus, *whether an extension of time ought to be granted or otherwise is an exercise of judicial discretion.* And it is a well-settled principle that *an appellate court will rarely interfere with the court's exercise of judicial discretion* unless it is clearly satisfied that the discretion had been exercised on a wrong principle (see Federal Court decision in *Vasudevan v T Damodaran & Anor* [1981] 2 MLJ 150 and Privy Council case of *Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228). (Emphasis added.)

[13] In the same case, the court concludes as follows:

> [30] In conclusion, we are of the view that *the time frame in applying for judicial review prescribed by the Rules is fundamental. It goes to jurisdiction and once the trial judge had rejected the explanation for the delay for extension of time to apply for judicial review, it follows that the court no longer has the jurisdiction to hear the application for leave for judicial review. Whether the application has merits or not, is irrelevant.* (Emphasis added.)

[14] In this regard, the burden is on the appellant to show the court the good reason to extend the time for filing the leave application and for the High Court to analyse the reason and exercise its judicial discretion.

[15] Reverting to the present case, the High Court judge's findings were that the decision was on 14 August 2019 and the application for leave was filed on 20 May 2020. The delay was about six months after minus the three months to file the application under the Rules. On the other hand, the appellants contended that the impugned decision was made on or about 2 January 2020. Here, the Cabinet made the decision to change the implementation of the teaching of Khat to the implementation of Jawi writing on 14 August 2019. This can be seen in the Hansard dated 21 October 2019 that discussed the said decision. However, there was no evidence produced by the appellants to show that the decision for the teaching of Khat was made on or about 2 January 2020.

[16] The High Court judge also considered the appellants' contention that they only knew about the impugned decision when the Bahasa Melayu textbook was circulated to the students and the delay was due to the pandemic COVID-19 where the Movement Control Order ('MCO') was enforced on 18 March 2020 and continued with the Controlled MCO ('CMCO') on 4 May 2020.

[17] About the reason given by the appellants, the High Court judge found that the MCO followed by the CMCO cannot be the reason for the delay as the decision was before the enforcement of the MCO and the CMCO. Further, the issue of the implementation of the Jawi writing replacing the teaching of Khat was made on 14 August 2019 and the decision was made public through media statements. In addition, the issue had become a heated debate among the public. This is also supported in the statement by the Education Minister in Parliament, Dr Maszlee bin Malik reported in Hansard dated 21 October 2019 as follows:

> Walau bagaimanapun, sebagaimana yang dibangkitkan oleh Ahli Yang Berhormat Parit Sulong, isu berkaitan *pengenalan kepada tulisan khat yang menarik perhatian semua bermula dengan satu penulisan di sebuah akhbar berbahasa Cina pada bulan Julai tahun ini dan kemudian tular di media sosial. Penularan isu ini menerima pelbagai reaksi dan respons sama ada positif atau negatif daripada masyarakat. Antara respons yang diterima termasuklah ketidakpuasan hati pihak tertentu sehingga mewujudkan kebimbangan tercetusnya polemik dan salah faham dalam kalangan masyarakat bukan Melayu.* (Emphasis added.)

[18] As such, the High Court judge has found that there was no good or cogent reason for the delay. This is an exercise of the judge's judicial discretion.

Having considered the reason for the said decision, we find the decision was justified and there is no reason for us to interfere with the judge's discretion.

[19] On the same issue, counsel for the appellant submitted that in the affidavit filed by the second appellant dated 15 May 2020, which was also filed on behalf of the first and third appellants, averred that they first saw the books with the Khat writings on 2 January 2020 and this averment was not rebutted by the respondents in their affidavits. As such, the appellant's averment should be accepted. The case of *Ng Hee Thong & Anor v Public Bank Bhd* [2000] 2 MLJ 29; [1995] 1 CLJ 609 was quoted to support this contention.

[20] However, counsel for the appellant conceded that the said books with the Khat writings were not exhibited in court. In light of the decision of the Cabinet to proceed with the implementation of Jawi writings, not the Khat writings, the appellant's assertion in the affidavit is only a bare averment. Therefore, the principle in *Ng Hee Thoong*'s case has no application in the present issue.

[21] Even if we were to accept the appellants' contention that the decision was on 2 January 2020, there was still a delay of about one month and 23 days to file the leave application. As discussed earlier, the reason given by the appellant was not a good reason envisaged by O 53 r 3(7), for the court to allow the extension of time.

[22] On this ground alone, the High Court was correct in dismissing the appellants' leave application for want of jurisdiction as explained by the Federal Court in *Wong Kin Hong*'s case.

[23] In any event, for completeness, we will proceed to deal with other relevant issues in this case.

WHETHER THE APPLICANTS HAD CHALLENGED THE WRONG DECISION

[24] The main issue here is whether there is a final decision to implement the Khat writing by the Cabinet or even by the Education Ministry.

[25] In this regard, the respondent contended that the implementation of 'Khat' writing was replaced with the Jawi writing based on the Cabinet decision on 14 August 2019. This is reflected in the Hansard alluded to earlier and the complete explanation by the Minister is as follows:

> Walau bagaimanapun, sebagaimana yang dibangkitkan oleh Ahli Yang Berhormat Parit Sulong, isu berkaitan *pengenalan kepada tulisan khat yang menarik perhatian semua bermula dengan satu penulisan di sebuah akhbar berbahasa Cina pada bulan*

Julai tahun ini dan kemudian tular di media sosial. Penularan isu ini menerima pelbagai reaksi dan respons sama ada positif atau negatif daripada masyarakat. Antara respons yang diterima termasuklah ketidakpuasan hati pihak tertentu sehingga mewujudkan kebimbangan tercetusnya polemik dan salah faham dalam kalangan masyarakat bukan Melayu.

Dalam hal ini KPM sama sekali tidak bersifat keras kepala atau *defensive*, sebaliknya mengamalkan pendekatan terbuka dengan mengadakan sesi perbincangan dan mendapatkan pandangan daripada pelbagai pihak. Justeru, beberapa siri pertemuan telah diadakan melalui pejabat saya dan Pejabat Timbalan Menteri Pendidikan bersama-sama pertubuhan bukan kerajaan (NGO) yang berkaitan, wakil rakyat yang terdiri daripada Ahli Parlimen dan Ahli Dewan Undangan Negeri, termasuk pengurusan tertinggi KPM dan Bahagian Pembangunan Kurikulum KPF.

Bagi merungkai salah faham yang timbul dan menjelaskan beberapa perkara berkaitan tulisan khat ini, KPM dari semasa ke semasa telah mengeluarkan kenyataan media iaitu pada 2 Ogos dan 8 Ogos 2019. *Berdasarkan keputusan terkini Mesyuarat Jemaah Menteri pada 14.8.2019, satu lagi kenyataan media dikeluarkan bagi memaklumkan iaitu pengenalan tulisan 'khat' dipinda kepada tulisan 'jawi' dalam Bahasa Melayu Tahun 4 serta diteruskan di sekolah kebangsaan.* Namun bagi sekolah jenis kebangsaan, perlaksanaannya adalah tertakluk kepda persetujuan oleh Persatuan Ibu Bapa dan Guru (PIBG) serta ibu bapa di sekolah tersebut.

Mesyuarat Jemaah Menteri juga sepakat dengan keputusan agar pengenalan tulisan jawi ini tidak dinilai dalam apa-apa ujian dan peperiksaan. Susulan daripada keputusan tersebut, KPM telah melakukan penambahbaikkan terhadap standard pembelajaran dalam Dokumen Kurikulum Mata Pelajaran Bahasa Melayu. (Emphasis added.)

[26] The evidence here revealed that the decision to implement the teaching of Khat has been replaced with the implementation of Jawi writing as of 4 August 2019. As such, when the appellants filed the application for leave for judicial review on 20 May 2020, there was no longer any decision to implement Khat in school for the dourt to quash the said decision. No other evidence presented by the appellants that shows the existence of a decision to teach Khat when they file the application for leave for judicial review. Here, as the appellants submitted categorically that they are not challenging the implementation of Jawi writing but the teaching of Khat, we find, that the appellants' application for leave is bereft of any merit.

[27] As to the contents of Hansard, we agree with the High Court judge that the court shall take judicial notice of it as provided under ss 57(1)(d) and 78(1)(b) of the Evidence Act 1950. The sections state as follows:

(i) Section 57(1)(d)
57(1) The court *shall take judicial notice* of the following facts:

...

(d) *the course of proceedings in Parliament*, in the federal legislatures that existed in

Malaysia before Parliament was constituted, in the legislature of any State in Malaysia, and in the Parliament of the United Kingdom;

(ii) Section 78(1)(b)

(1) The following public documents may be proved as follows:

...

(b) *the proceedings of Parliament* or of any of the federal legislatures that existed in Malaysia before Parliament was constituted or of the legislature of any State — *by the minutes of the body* or by the published Acts of Parliament, Ordinances, Enactments or abstracts or by copies purporting to be printed by the authority of the Government concerned; (Emphasis added.)

[28] The Federal Court in *Stephen Kalong Ningkan v Government of Malaysia* [1968] 1 MLJ 119 had taken judicial notice of the speech of the Deputy Prime Minister and an opposition member about a bill debated in Parliament. In that case, Ong Hock Thye FCJ said this:

There is of course, another side to the picture so ably and forcefully presented by the Deputy Prime Minister. The principles of natural justice should apply not only in the courts but also *in the proceedings of Parliament, of which judicial notice may be taken*. (Emphasis added.)

See also (*Syarikat Sebati Sdn Bhd v Pengarah Jabatan Perhutanan & Anor* [2019] 2 MLJ 689(FC); *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Mohd Sobri Che Hassan* [2020] 4 MLJ 620; [2020] 1 CLJ 595(FC)).

[29] What we shall conclude on this issue is that when the appellants filed the application for leave, there was no decision in existence to implement the teaching of Khat in school as elaborated earlier. Thus, in the present case, there is no decision in the exercise of the public duty as envisaged under O 53 r 2(4). The issue of the appellants challenging a wrong decision does not arise as the appellants had made it clear that they are not challenging the implementation of Jawi writing in schools.

[30] In addition, an application for leave for judicial review may be made by any person who is adversely affected by the decision. Order 53 r 2(4) states:

Any person *who is adversely affected by the decision*, action or omission in relation to the exercise of the public duty or function *shall be entitled to make the application*. (Emphasis added.)

[31] In the Federal Court case of *Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490; [2012]

1 CLJ 805 it was held as follows:

> [20] It is clear from the above that *a person who is adversely affected by the decision of a public authority can make an application for a judicial review of that decision.* But the person must first obtain leave before his substantive motion can be heard. At the leave stage without the need to go into depth of the abundance of authorities, suffice for us to state that the threshold for the granting of such leave is very low. *Leave is normally granted if the application is neither frivolous nor vexatious* and it justifies further argument on a substantive motion (see *Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Bank Association* [1990] 3 MLJ 228, *Bandar Utama Development Sdn Bhd & Anor v Lembaga Lebuhraya Malaysia & Anor* [1998] 1 MLJ 224; [1997] 4 CLJ 725, *Mohd Nordin Johan v The Attorney-General Malaysia* [1983] 1 MLJ 68; [1983] 1 CLJ 130; [1983] CLJ Rep 271 and *JP Berthelsen v Director General of Immigration Malaysia & Ors* [1987] 1 MLJ 134; [1986] 2 CLJ 409; [1986] CLJ Rep 160)
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> ...
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> [27] We adopt the same view. Under the scheme of O 53 of the RHC, *only a person adversely affected by the decision of a public authority shall be entitled to make the application for judicial review* ... (Emphasis added.)

[32] In the present case, as mentioned earlier, there was no decision to implement the teaching of Khat in schools as it was replaced with the Jawi writing based on the Cabinet decision on 14 August 2019. Hence, it cannot be said that the appellants were adversely affected by the decision to implement Khat which is no longer in existence when they filed the application for leave for judicial review on 20 May 2020. The application is frivolous and vexatious. There must first be a decision to be challenged.

[33] In the same case mentioned above, the Federal Court explained as follows:

> [26] It is trite law that the purpose of an order for certiorari is to quash the legal effect of a decision. In England, in the case of *Council of Civil Service Unions v Minister for Civil Service* [1984] 3 All ER 935 *the House of Lords held that for a decision to be susceptible to the court's reviewing powers, there must first be a decision by a decision maker or a refusal by him to make a decision, and that decision must affect the aggrieved party* by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy. (Emphasis added.)

[34] In the circumstances, we are of the view that the appellants had failed to fulfil the requirement that enables the application for leave for judicial review to be made as envisaged under O 53 r 2(4) of the Rules of the High Court.

[35] As we found that there was no decision to implement the teaching of Khat in schools to be challenged by the appellants in their application for judicial review as discussed earlier and the fact that the appellants are not

challenging the implementation of Jawi writing, the other issues submitted at the High Court and before us are irrelevant. The issues are that the decision maker, Kementerian Pendidikan Malaysia not named in the application, the appellants' locus standi to challenge the Jawi implementation in schools, and whether the implementation of Jawi writing is non-justiciable.

CONCLUSION

[36] Based on the above-said reasons, it is our unanimous decision that the appellants' appeal is without merit and the appeal is dismissed. The decision of the High Court in dismissing the application for leave for judicial review is affirmed. We also made no order as to costs.

Appeal dismissed.

Reported by Ahmad Ismail Illman Mohd Razali